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BILL NO. S-78-03-28

SPECIAL ORDINANCE NO. S-52-78

AN ORDINANCE approving an Agreement with Morris Liechty, Developer, for construction of a sanitary sewer.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Agreement dated March 22, 1978, between the City of Fort Wayne, by and through its Mayor and the Board of Public Works and Morris Liechty, Developer, for:

Extension of sewer services to Oak Grove Estates - Dupont and Tonkel Roads area, for;

Sanitary Sewer

"Beginning at a sanitary sewer manhole located at 1000± ft. west of and 50± ft. north of intersection of Dupont and Tonkel Roads, thence easterly 200± LF to a proposed manhole, thence northeasterly following the meanderings of an existing ditch 700± LF to a proposed manhole located 300± LF west of and 450± LF north of centerline of said intersection of Dupont and Tonkel Roads, thence due east 350± LF east of centerline of said intersection of Dupont and Tonkel Roads, thence due north 650± LF along and parallel to the east right-of-way of Tonkel Road terminating at a proposed manhole."

of which the developer shall pay the entire cost and expense of the construction of said sewer, all as more particularly set forth in said agreement which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

John Nuckols
Councilman

APPROVED AS TO FORM AND LEGALITY,

CITY ATTORNEY

Read the first time in full and on motion by Nuckols, seconded by Hinga, and duly adopted, read the second time by title and referred to the Committee on Public Works (and ~~the City Plan Commission~~ for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19__, at _____ o'clock ~~M.,E.S.T.~~

DATE: 3-28-78

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by Nuckols, seconded by Hinga, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	9	0			
BURNS	✓				
HINGA	✓				
HUNTER	✓				
MOSES	✓				
NUCKOLS	✓				
SCHMIDT, D.	✓				
SCHMIDT, V.	✓				
STIER	✓				
TALARICO	✓				

DATE: 4-11-78

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ZONING MAP) (GENERAL) (ANNEXATION)~~ (SPECIAL) (~~APPROPRIATION~~) ORDINANCE (~~RESOLUTION~~) No. G-52-78 on the 11th day of April, 1978

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of April, 1978 at the hour of 11:30 o'clock A.M.,E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 17th day of April, 1978 at the hour of 11 o'clock 9 M.,E.S.T.

Robert E. Armstrong
MAYOR

Bill No. S-78-03-28

REPORT OF THE COMMITTEE ON PUBLIC WORKS

We, your Committee on Public Works to whom was referred an Ordinance approving an Agreement with Morris Liechty, Developer, for construction of a sanitary sewer

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance do PASS.

JOHN NUCKOLS - CHAIRMAN

PAUL M. BURNS - VICE CHAIRMAN

WINFIELD C. MOSES, JR.

DONALD J. SCHMIDT

JAMES S. STIER

4-11-78 CONCURRED IN

DATE CHARLES W. WESTERMAN, CITY CLERK

A G R E E M E N T
F O R
S E W E R E X T E N S I O N

THIS AGREEMENT, made in triplicate this 22 day of March, 1978, by and between Morris Liechty, hereinafter referred to as "DEVELOPER", and the CITY OF FORT WAYNE, INDIANA, an Indiana municipal corporation, hereinafter referred to as "CITY",

WITNESSETH:

WHEREAS, the DEVELOPER desires to construct a sanitary sewer described as follows:

Sanitary Sewer

> "Beginning at a sanitary sewer manhole located at 1000± ft. west of and 50± ft. north of intersection of Dupont and Tonkel Roads, thence easterly 200± LF to a proposed manhole, thence northeasterly following the meanderings of an existing ditch 700± LF to a proposed manhole located 300± LF west of and 450± LF north of centerline of said intersection of Dupont and Tonkel Roads, thence due east 350± LF to a proposed manhole located 450± LF north of and 30± LF east of centerline of said intersection of Dupont and Tonkel Roads, thence due north 650± LF along and parallel to the east right-of-way of Tonkel Road terminating at a proposed manhole."

Said sanitary sewer shall be 10 inches in diameter, in accordance with plans, specifications, and profiles heretofore submitted to the CITY and now on file in the Office of the Chief Engineer of the Water Pollution Control Engineering Department of the CITY and known as Oak Grove Estates Offsite Sanitary Sewer, which plans, specifications and profiles are by reference incorporated herein and made a part hereof, which sewer will serve not only land in which the DEVELOPER has an interest, but also adjoining land areas.

WHEREAS, the cost of construction of said sewer is represented to be $29,400.00 composed of $27,200.00 for construction costs and $2,200.00 for consultant engineering. NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER

The DEVELOPER shall cause said sewer to be constructed and located in accordance with said plans, specifications, and profiles, all approved by the CITY, under private contract with CITY approval.

All work and materials shall be inspected by the CITY and conform with all CITY standards and specifications. Upon completion, said sewer shall become the property of CITY and all further maintenance thereafter shall be borne by the CITY.

2. COST OF CONSTRUCTION

The DEVELOPER agrees to pay the entire cost and expense of construction of said sewer, in cash, and to hold the CITY harmless from any liability for claims connected therewith.

3. AREA OF DEVELOPER

Said sewer, when accepted by the CITY, will initially serve the following described real estate of the DEVELOPER:

"Parts of Lots #5, #6, #7 and #8 in Trease Estate Plat "A" as in Deed Record 158, Pages 1 to 8, recorded in the Office of the Recorder of Allen County, Indiana, situated in the Southwest Fractional Quarter of Section 31, Township 32 North, Range 13 East, Allen County, Indiana, more particularly described as follows, to wit:

Beginning on the West line of said Lot #5 as situated coincident with the West line of said Southwest Fractional Quarter, at a point situated 989.2 feet (988.6 feet by deed) S 00°-00' E from the Northwest corner of said Southwest Fractional Quarter (said Northwest corner being situated coincident with the Northwest corner of said Lot #5); thence S 00°-00' E (assumed bearing) on and along said West line, being also the centerline of Tonkel Road, a distance of 663.7 feet to the Northerly right-of-way line of State Road #1, as it presently exists; thence Northeasterly, on and along said northerly right-of-way line, as follows:

Northeasterly, on and along a regular curve to the left having a radius of 3769.72 feet, a distance of 147.51 feet (the chord of which bears N 61°-52' E for a length of 147.5 feet); thence N 56°-11' E, a distance of 96.4 feet; thence N 59°-01' E, a distance of 98.5 feet; thence N 57°-47' E, a distance of 197.55 feet; thence Northeasterly on and along a regular curve to the left having a radius of 1769.72 feet, a distance of 205.23 feet (the chord of which bears N 53°-13' E for a length of 205.2 feet) to the

Southwesterly line of a 2.58 acre tract conveyed to Andrew S. and Mary H. Gall by a deed recorded at Deed Record 591, Page 375 in the Office of the Recorder of Allen County, Indiana; thence N 38°-32' W, on and along the Southwesterly line of said 2.58 acre tract, a distance of 283.6 feet to a survey pipe found at the most Westerly corner of said 2.58 acre tract; thence N 32°-19' E, on and along an existing line fence, being situated, by deed, 523.9 feet (measured at right angles) Northwesterly of and parallel to the centerline of Old Leo Road, a distance of 1320.4 feet (recorded 1319.5 feet) to the Southwesterly line of a 2.04 acre tract conveyed to Donald G. Amstutz and Byron F. Weilbaker by a deed recorded at Deed Record 530, Page 61 in the Office of the Recorder of Allen County, Indiana; thence N 57°-28' W, on and along the Southwesterly line of said 2.04 acre tract, a distance of 92.3 feet to the North line of said Lot #8 at a point situated 527.0 feet (recorded 528 feet) West of the Northeast corner thereof; thence S 89°-34' W, on and along the North line of Lots #8, #7, #6 and #5, being also the North line of said Southwest Fractional Quarter, being established by an existing line fence and monuments found, 1795.5 feet to a point situated 164.0 feet, N 89°-34' E from the Northwest corner of said Southwest Fractional Quarter;

thence S 00°-00' E, and parallel to the West line of said Southwest Fractional Quarter, a distance of 989.2 feet (988.6 feet by deed); thence S 89°-14' W, and parallel to said North line, 164.0 feet to the point of beginning, containing 49.629 acres of land, subject to legal right-of-way for Tonkel Road."

As the DEVELOPER will pay for the entire cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this Agreement against the above described real estate for the construction of said sewer, or the use thereof, by the present or future owners of said aforedescribed real estate, except as to such standard tap-in and inspection fees as are customarily charged by the CITY for connections to City sewer main.

An area connection charge of $650.00 per acre must be paid to CITY at the time of connection by the DEVELOPER for area aforedescribed which is served by the herein described sanitary sewer. This area connection charge represents the oversizing cost expended by CITY for the Area 2, St. Joseph Interceptor Sanitary Sewer, Res. 61-140-11.

4. CHARGE AGAINST EXCESS AREA

Said sewer, however, also serves an additional or excess area as shown on the attached Exhibit "A". In the event any present or future owner of real estate shall at any time within fifteen (15) years of the date of this agreement, desire to use said sewer or any extension thereof, whether by direct tap or through the extension or connection of lateral or local lines to service such land, CITY, through its duly constituted authorities, before permitting such use, shall require by contract or assessment, as may be appropriate, that such owner or owners of said excess area pay to the CITY, in addition to the cost of standard tap-in and inspection fees, the sum of $0.047066 per square foot for the area served by each such connection and use, which represents the pro rata share of the cost of the extension of the CITY sewer to said area. Any amount so collected by the CITY shall be paid by the CITY within sixty (60) days of the receipt thereof to the DEVELOPER.

An area connection charge of $475.00 per acre must be paid to CITY at the time of connection by any such owner or owners of any excess area sought to be served by the herein described sanitary sewer. This area connection charge is in addition to the local charge as set forth above, and represents the oversizing cost expended by CITY for the Area 1, St. Joseph Interceptor Sanitary Sewer, Res. 61-140-11.

5. BOND

This contract is subject to DEVELOPER furnishing a satisfactory Performance and Guaranty Bond for the value of the sewer, said bond to serve as a guarantee of said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by the CITY.

6. LIMITATION ON USE

Said sewer shall be constructed for disposal of sanitary sewage only and neither the parties hereto, their successors, or assigns, or any future owner of any land serviced by said sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer, any water run-off caused by natural precipitation or anything other than sanitary sewage or contaminated waste.

7. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION

The DEVELOPER, for itself, its successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interefere with or oppose any pending or future annexation by CITY of any territory now or hereafter owned by him, as described in Article 3 herein.

The DEVELOPER further agrees that any deeds, contracts, or other instruments of conveyance made by the DEVELOPER, its successors or assigns transferring or conveying any interest or title in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in this article, which provisions contained in this article, which provisions shall run with the land and the acceptance of the delivery of any such instrument from the DEVELOPER, his successors and assigns by any grantee, vendee, or contract purchase, shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee or contract purchaser and their successors in title.

The DEVELOPER further agrees to record an executed copy of this contract in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of CITY as hereinafter provided. Any owner or owners of LAND which is now, or hereafter, located outside the corporate limits of City who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their

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MAP

or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of such land or of the territory in which it is located or of the area served by said sewer.

8. GOVERNING STATUTE

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Section 16, 17 and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana (I.C. 19-2-7-16, I.C. 19-2-7-17 and I.C. 19-2-7-18), the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

9. COUNCILMANIC APPROVAL

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of City, by duly adopted ordinance, and if such Ordinance is not adopted within a period of ninety (90) days after execution thereof, this contract shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

ATTEST:
By: Mike Thomas
Mike Thomas, Partner

DEVELOPER: MORRIS LIECHTY
By Morris Liechty
Morris Liechty

CITY OF FORT WAYNE, INDIANA

By _____
Robert E. Armstrong, Mayor

BOARD OF PUBLIC WORKS

By Henry P. Wehrenberg
Henry P. Wehrenberg, Chairman

By Ethel H. LaMar
Ethel H. LaMar, Member

By Max G. Scott
Max G. Scott, Member

ATTEST:

Ursula Muller

Clerk

Approved as to form and legality:

Terry J. Brubaker

Associate City Attorney

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Morris Liechty, by who acknowledged the execution of the foregoing agreement for sewer extension as and for its voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 18th day of January, 1978.

Deanna Faust

Deanna Faust ,Notary Public

Resident of Allen County

My Commission Expires:

10-11-81

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert E. Armstrong, Mayor; Henry P. Wehrenberg, Chairman of the Board of Public Works; Ethel H. LaMar and Max G. Scott, Members of the Board of Public Works, who acknowledged the execution of the foregoing agreement for sewer extension, as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this ____ day of _____, 1978.

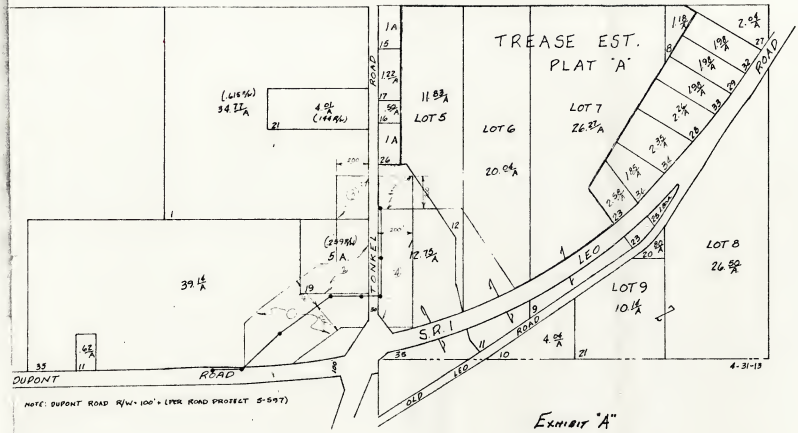
_____

,Notary Public

My Commission Expires:

_____

This instrument prepared by: Phil Boller, Chief Water Pollution Control, City of Fort Wayne, Allen County, Indiana.



NOTE: DUPONT ROAD R/W = 100' + (PER ROAD PROJECT S-597)

EXHIBIT "A"

BENEFITED AREA	AREA IN SQ. FEET	PROPERTY OWNER	LOCAL SEWER COST COST PER SQ. FT.	LOCAL SEWER COST PER E.D.	AREA'L CONNECTION FEES (EXCLUDING ROAD)	AREA'L CONNECTION FEES (INCLUDING ROAD)	TOTAL AREA CONNECTION FEES	PROJECT COST TOTALS PER PROPERTY WORK (5 + 8)
1	252,900	K & H REALTY CORP.	.0470466	$ 4,902.99	$ 2,757.75	N/A	$ 2,757.75	$ 4,660.74
2	18,000	VIN. HOZLEN, WM. P. III & [illegible]	.0470466	$ 353.91	$ 1,472.11	N/A	$ 1,472.11	$ 1,826.02
3	54,000	HARTMAN, JOHN R. & [illegible]	.0470466	$ 2,540.37	$ 593.20	N/A	$ 593.20	$ 3,133.57
4	142,600	NATWA, [illegible]	.0470466	$ 6,709.88	$ 1,596.60	N/A	$ 1,596.60	$ 8,305.48
5	400,000	[illegible]	.0470466	$ 18,821.64	N/A	$ 30,604.80	$ 30,604.80	$ 49,426.44

TOTAL = 828,900 SF

* BASED ON TOTAL ASSESSABLE PROPERTY OF DEVELOPED AND VACANT C.T.C. ZONE CITY TAX. NATWA HAS ONE ACL INC TO BEW WATER AND SEWER SERVICE.

TOTAL LOCAL COST OF SEWER

CONSTRUCTION	$ 27,200.00
ENGINEERING	$ 2,400.00
TOTAL	$ 29,600.00

∴ LOCAL COST PER S.F. = $\frac{\$29,600.00}{828,900 \text{ SF}}$ = 0.0470466

PREPARED BY: D.K. TAZIAN ASSOC. INC.

TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT FOR SEWER EXTENSION - DUPONT & TONKEL ROADS - MORRIS LIECHTY, DEVELOPER

4012

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS

S-78-03-28

SYNOPSIS OF ORDINANCE AGREEMENT FOR SEWER EXTENSION - DUPONT & TONKEL ROADS - MORRIS LIECHTY, DEVELOPER. EXTENSION OF SEWER SERVICES TO AREA KNOWN AS OAK GROVE ESTATES.

(ATTACHED IS AGREEMENT FOR SEWER EXTENSION)

EFFECT OF PASSAGE SEWER SERVICES EXTENDED TO DUPONT, TONKEL ROADS AREA

EFFECT OF NON-PASSAGE INABILITY TO CONSTRUCT SEWER AS PLANNED

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) DEVELOPER TO ASSUME ENTIRE COST AND EXPENSE

ASSIGNED TO COMMITTEE

EP

Public Works